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BAXTER HEALTHCARE SA

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FRESENIUS MEDICAL CARE HOLDINGS,  
INC. AND FRESENIUS USA, INC.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

BAXTER HEALTHCARE  
CORPORATION,  
BAXTER INTERNATIONAL INC.,  
BAXTER HEALTHCARE SA, AND  
DEKA LIMITED PARTNERSHIP,

*Plaintiffs and Counter-defendants,*

vs.

FRESENIUS MEDICAL CARE  
HOLDINGS, INC., d/b/a FRESENIUS  
MEDICAL CARE NORTH AMERICA,  
and FRESENIUS USA, INC.,

*Defendants and Counter-claimants.*

Case No. C 07-01359 PJH (JL)

**FIRST AMENDED STIPULATION TO SET  
CASE DATES OCCURRING BETWEEN  
THE MARKMAN HEARING AND TRIAL  
AND ORDER**

WHEREAS, the Court previously entered a schedule, based on the parties' stipulation, [Dkt. Nos. 119, 120] for the case proceedings between the *Markman* Hearing and trial date;

WHEREAS, the prior schedule was based, in part, on the assumption that it would take five weeks to issue a claim construction Order; and;

WHEREAS, the Court has advised the parties that the claim construction Order may not issue in time to adhere to the current schedule,

NOW, THEREFORE, it is stipulated by the respective parties and their counsel of record:

At the claim construction hearing the ~~Court~~ parties raised the possibility that further claim limitations might require construction following issuance of the claim construction Order. ~~The~~ A schedule for any further claim construction will be set at the case management conference which ~~parties agree that, absent special circumstances, they will raise any such further claim~~ will follow the initial claim construction ruling. ~~construction issues in the context of summary judgment motions.~~

The following table is commended to the Court for its adoption as the dates by which the present case shall proceed.

EVENT	By Local Rule or Court Order	Parties' Proposed Stipulated Dates
Subsequent Case Management Conference (PJH patent order ¶12)	Date set at same time as claim construction ruling	
Final Infringement Contentions (Patent L.R. 3-6(a))	Not later than 30 days after Claim Construction Ruling	
Final Invalidity Contentions (Patent L.R. 3-6(a))	Not later than 50 days after Claim Construction Ruling	
Defendants' Disclosure of Reliance on Advice of Counsel and Production of Opinion (Patent L.R. 3-8)	Not later than 50 days after Claim Construction Ruling	
Fact Discovery Cut-Off		December 1, 2008
Final Date for Motions to Compel Fact Discovery (Civ. L.R. 26)	No more than 7 days after cut-off	

Willfulness Discovery Cut-Off	14 calendar days after Defendants' Disclosure of Reliance on Advice of Counsel and Production of Opinion	
Deadline for Expert Reports for Issues on which the Parties Bear the Burden	60 days following claim construction ruling	
Deadline for Rebuttal Expert Reports	88 days after claim construction ruling	
Expert Discovery Cut-Off	110 days after claim construction ruling	
Final Date for Motions to Compel Expert Discovery (Civ. L.R. 26)	No more than 7 days after cut-off	
Deadline for Filing of Dispositive Pretrial Motions	To be determined	
Deadline for Hearing Dispositive Motions (Dkt 87)	Not later than 35 days after filing of motion (Civ. L.R. 7-2)	
Final Pretrial Conference meet and confer (Dkt 87)	Not less than 40 days prior to Pretrial Conference	
Joint Pretrial Statement, trial briefs, motions <i>in limine</i> , etc (Dkt 87)	Not less than 30 days prior to Pretrial Conference	
Oppositions to Motions <i>in limine</i>	Not less than 15 days prior to the pretrial conference	
Pretrial Conference		March 12, 2009 2:30 p.m.
Trial		April 6, 2009 8:30 a.m.

September 2, 2008

By: /s/ David K. Callahan

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September 2, 2008

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September 2, 2008

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**ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.**

I, David K. Callahan, declare as follows:

1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare Corporation's legal counsel in the above-captioned litigation.

2. Pursuant to the Northern District of California Electronic Filing Procedures and General Order No. 45, I attest that Michael E. Florey, counsel for Defendants, Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America, and Fresenius USA, Inc., (collectively "Fresenius"), and Maureen K. Toohey, counsel for Plaintiff DEKA Products Limited Partnership, concur in the filing of this document and have granted me permission to electronically file this document absent their actual signatures.

Dated: September 2, 2008

Respectfully submitted,

Kirkland & Ellis LLP

By: /s David K. Callahan s/  
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BAXTER HEALTHCARE CORPORATION

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Case No. C 07-01359 PJH (JL)

**[PROPOSED] ORDER TO SET CASE  
DATES OCCURRING BETWEEN THE  
MARKMAN HEARING AND TRIAL**

AS MODIFIED BY THE COURT, IT IS SO ORDERED  
PURSUANT TO STIPULATION, ~~IT IS SO ORDERED~~, the dates set forth in the FIRST  
AMENDED STIPULATION TO SET CASE DATES OCCURRING BETWEEN THE  
MARKMAN HEARING AND TRIAL are adopted by the Court and shall govern the  
proceedings of the case.

DATED: September 3, 2008

